



Robert A. Alm
Executive Vice President

December 28, 2009

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PUBLIC UTILITIES
COMMISSION

The Honorable Chairman and Members
of the Hawaii Public Utilities Commission
Kekuanaoa Building, First Floor
465 South King Street
Honolulu, Hawaii 96813

Dear Commissioners:

Subject: Docket No. 2008-0274 – Decoupling Proceeding
Hawaiian Electric Companies' Proposed Interim Decision and Order

In conjunction with the *Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited*,¹ filed November 25, 2009 ("Motion"), the Hawaiian Electric Companies respectfully submit the attached proposed interim decision and order for the Commission's use. In general, it attempts to summarize the points made by the parties in the Motion and in response to the Motion, and is not intended to be a reply to positions taken by the other parties in their responses.

The Companies will not object if any other party to this proceeding (1) files its own proposed decision and order, or (2) submits comments on the Companies' proposed interim decision and order.

Should the Commission have any questions, please call Dean Matsuura at 543-4622.

Sincerely,

Attachment

cc: Division of Consumer Advocacy
Kauai Island Utility Cooperative
Hawaii Renewable Energy Alliance
Haiku Design & Analysis
Hawaii Holdings, LLC, dba First Wind Hawaii
Department of Business, Economic Development, and Tourism
Hawaii Solar Energy Association
Blue Planet Foundation

¹ Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited are collectively referred to as the "Hawaiian Electric Companies" or "Companies."

Attachment

INTERIM DECISION AND ORDER

By this Interim Decision and Order, the commission grants the motion, filed November 25, 2009 ("Motion"), of HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, "HECO Companies")¹ for: (1) interim approval of the establishment and implementation by the respective HECO Companies of the interim revenue balancing account ("RBA") and revenue adjustment mechanism ("RAM") tariff provisions filed as Attachments 1-6 to the Motion;² and (2) the continuation of this proceeding for the primary purpose of evaluating the design and potential adoption of clean energy-related decoupling performance metrics.

I.

Background

¹ The parties to this docket are the HECO Companies, the DIVISION OF CONSUMER ADVOCACY OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), HAIKU DESIGN & ANALYSIS ("HDA"), the DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM ("DBEDT"), HAWAII SOLAR ENERGY ASSOCIATION ("HSEA") and BLUE PLANET FOUNDATION ("Blue Planet") (collectively, "Parties"). HAWAII HOLDINGS, LLC, DBA FIRST WIND HAWAII ("First Wind") is a participant in this docket.

² Attachments 1-6 to the Motion are attached as Exhibits 1-6, respectively, to this Interim Decision and Order.

On October 24, 2008, the commission issued an order opening this docket ("Opening Order") to examine implementing a decoupling mechanism for the HECO Companies that would modify the traditional model of ratemaking for the HECO Companies by separating the HECO Companies' revenues and profits from electricity sales.

In the Opening Order, the commission: (1) named the HECO Companies and the Consumer Advocate as parties to this proceeding; (2) directed them to file a joint proposal on decoupling within 60 days of the date of the Opening Order; and (3) directed them (and any intervenors and participants) to file a stipulated (or proposed) procedural schedule and a stipulated (or proposed) protective order within 45 days of the date of the Opening Order.

On December 3, 2008, the commission issued an Order Granting Intervention, and granted intervenor status to LIFE OF THE LAND ("LOL"), HREA, HDA, First Wind, DBEDT, HSEA, and Blue Planet.

Thereafter, on January 21, 2009, the commission approved, with modifications, the proposed Stipulated Procedural Order submitted by the HECO Companies and the Consumer Advocate, as well as then-intervenors LOL, HREA, HDA, First Wind, DBEDT, HSEA and Blue Planet on December

26, 2008, pursuant to the Opening Order.³ In addition, on January 21, 2009, the commission issued a scoping paper titled, "Decoupling Utility Profits from Sales: Design Issues and Options for the Hawaii Public Utilities Commission" ("Scoping Paper").

On January 30, 2009, the HECO Companies and the Consumer Advocate each submitted decoupling proposals pursuant to Procedural Order, as supplemented by revised pages filed February 3, 2009.

As set forth in the Statement of Issues presented in the Procedural Order, the issues in this proceeding are:

1. Whether the joint proposal or any separate proposals that are submitted by the HECO Companies, the Consumer Advocate or other parties are just and reasonable?
2. Whether the decoupling mechanism(s) will result in accelerating the addition of new, clean energy resources in the HECO Companies' systems, while giving the HECO Companies an opportunity to achieve fair rates of return?
3. What should be the scope of and elements to be included in the decoupling mechanism?
4. How will decoupling impact the utilities, their customers, and the clean energy market?

³ See Order Approving, with Modifications, Stipulated Procedural Order Filed on December 26, 2008, which was filed on January 21, 2009 ("Procedural Order"). The commission subsequently approved a request by LOL to withdraw from this docket, and a motion by First Wind to change its status from an intervenor to a participant.

5. Which issues and details regarding the implementation of the decoupling mechanism(s), including the determination of any revenue target, should be taken up in the context of individual rate case proceedings of HECO, HELCO and MECO?
6. Whether any cost tracking indices proposed for use in estimating revenue adjustment calculations can be expected to determine just and reasonable revenue adjustments on an on-going basis, accounting for the differences between the revenue requirement amounts determined in each utility's last rate case and:
 - (a) The current cost of operating the utility;
 - (b) Return on and return of ongoing capital investment; and
 - (c) Any changes in State or federal tax rates.
7. Whether any earnings monitoring/sharing, service quality provisions, or any other adjustments or considerations are appropriate to implement as part of the decoupling methodology in order to calculate ongoing revenue adjustments that are just and reasonable?
8. Whether any provisions for administrative procedures (e.g., utility filings, decoupling tariffs, deferral accounting provisions, customer notice provisions, planned review/audit procedures and any appeal or hearing provisions) are appropriate, necessary and sufficient to ensure that post test year decoupling adjustments are fair and reasonable?
9. How many years should the decoupling/attrition revenue mechanism remain in place for each of the utilities before the next rate cases are to be filed and under what conditions can the utility,

the Commission or other parties initiate formal rate proceedings outside of such rate case intervals?

10. What accounting and regulatory reporting provisions are necessary to implement any decoupling provisions in a manner that will ensure reasonable definition, isolation and recovery of the types of costs that are to be separately tracked and charged to customers through other cost recovery mechanisms, such as Renewable Energy Infrastructure Program/Clean Energy Initiative, Energy Cost Adjustment Clause, Purchased Power, Demand Side Management, and other surcharge mechanisms?
11. Issues identified in the Commission's scoping paper in this docket.

In February 2009, the Parties submitted comments on and responses to questions raised in the Scoping Paper.

On February 27, 2009, a technical workshop was held to review the HECO Companies' and Consumer Advocate's decoupling proposals.

On March 30, 2009 a Joint Proposal on Decoupling and Statement of Position of the HECO Companies and Consumer Advocate ("Joint Proposal") was filed. A technical workshop/settlement discussion was held on April 20, 2009 in order to review the Joint Proposal, along with a second decoupling proposal submitted by HDA.

On May 11, 2009, the HECO Companies and Consumer Advocate filed their Joint Final Statement of Position ("FSOP") in this docket. FSOPs were also filed on May 11,

2009 by HDA, Blue Planet, HSEA, DBEDT and HREA. Pursuant to discussions that took place during a June 22, 2009 prehearing conference, the HECO Companies and Consumer Advocate filed revised and new exhibits to their Joint FSOP on June 25, 2009.

A panel hearing was held between June 29, 2009 and July 1, 2009, pursuant to the Commission's June 16, 2009 Order Establishing Hearing Procedures for the panel hearings.

From March through August 2009, the Parties exchanged and responded to information requests issued among the Parties (including information requests regarding the Joint Proposal), and also responded to information requests and additional questions issued by the Commission before, during and after the panel hearing.

The Parties submitted opening briefs and reply briefs in this docket on September 8, 2009 and September 29, 2009, respectively, pursuant to an extension of time granted by the Commission on August 7, 2009.

On November 25, 2009, the HECO Companies filed the instant Motion for interim relief and a Memorandum in Support of Motion ("HECO Memo"), to which the Parties responded in memoranda submitted between December 3 and December 11, 2009.

II.

The HECO Companies' Motion

In the Motion, the HECO Companies request interim approval of:

- (1) the establishment and implementation by HECO of the RBA (with a slight modification, as shown in Attachment 1 thereto,⁴ to include only one RBA account for all residential and nonresidential customers) to be effective January 1, 2010;
- (2) the establishment and implementation by HECO of the RAM (with modifications, as shown in Attachment 2 thereto,⁵
 - (a) to refund to ratepayers (with interest) RAM revenues associated with disallowed costs for Baseline Capital Projects,⁶ and
 - (b) to include an interim performance metric as described in Part III.F of the HECO Memo) to be effective, beginning with calendar year 2010;⁷

⁴ Attachment 1 to the Motion is a copy of HECO's proposed Interim RBA Tariff Provision.

⁵ Attachment 2 to the Motion is a copy of HECO's proposed Interim RAM Tariff Provision.

⁶ Projects with costs below the Commission's General Order No. 7 ("G.O. 7") threshold, as modified by Decision and Order No. 21002, are referred to as "Baseline Capital Projects".

⁷ As proposed by the Consumer Advocate and the HECO Companies in the Joint Decoupling Proposal. For purposes of the Motion, the "Joint Decoupling Proposal" is the proposal set forth in the Joint FSOP, and the exhibits attached thereto, as amended by the Revised and New Exhibits jointly filed by the HECO Companies and Consumer Advocate on June 25, 2009, and as further amended by Attachment 7 to the HECO Companies' responses to the commission's questions from the panel hearings held from June 29, 2009 to July

(3) both the HECO RBA and RAM to remain in effect until interim rates become effective pursuant to an interim decision and order in HECO's 2011 test year rate case, provided that HECO:

(a) does not file a 2010 test year rate case application, and

(b) files its 2011 test year rate case application by August 16, 2010;

(4) implementation by HELCO and MECO of the RBA and RAM (with slight modifications, as shown in Attachments 3-6 thereto) at such time as interim rates become effective pursuant to interim decision and orders in HELCO's and MECO's respective 2010 test year rate cases;⁸ and

(5) the continuation of this proceeding for the primary purpose of evaluating the design and potential adoption of clean energy-related decoupling performance metrics, with FSOPs to be filed by the parties no later than June 30, 2010.

According to the HECO Companies, the key components of the companies' proposed interim tariff provisions include:

1, 2009, which responses the HECO Companies filed on July 13, 2009.

⁸ Attachment 3 to the Motion is a proposed Interim RBA Tariff Provision for MECO. Attachment 4 to the Motion is a proposed Interim RAM Tariff Provision for MECO. Attachment 5 to the Motion is a proposed Interim RBA Tariff Provision for HELCO. Attachment 6 to the Motion is a proposed Interim RAM Tariff Provision for HELCO.

(1) a sales decoupling mechanism, which would be implemented through a RBA tariff provision (see Attachments 1, 3 and 5);

(2) a RAM, consisting of an O&M expense RAM component and a Rate Base RAM component, which is in the form of a RAM tariff provision (see Attachments 2, 4 and 6);⁹

(3) an Earnings Sharing Revenue Credit Mechanism, which would be implemented through a RBA tariff provision (see Attachments 1, 3 and 5 at 4); and

(4) consumer protection features included in the RAM tariff provision (in addition to the Earnings Sharing Revenue Credit Mechanism), a provision for Major Capital Projects Credits¹⁰ (see Attachments 2, 4 and 6 at 4-5), and a provision for Baseline Capital Projects' Credits (see Attachments 2, 4 and 6 at 5).¹¹

The HECO Companies' position is that interim approval of the RBA and RAM will: (1) encourage utility support for clean energy policies related to energy efficiency measures and distributed renewable energy generation; (2) provide regulatory benefits by reducing the frequency of rate cases; (3) help to maintain the HECO Companies' financial integrity through the timely tracking between rate cases of changes in business and economic conditions faced by the utilities that impact operations and maintenance costs and the return on and return of investments in infrastructure;

⁹ The revenue adjustments resulting from the RAM tariff provision also would be implemented through the RBA tariff provision.

¹⁰ Projects with costs in excess of the Commission's G.O. 7 threshold, as amended by Decision and Order No. 21002, are referred to as "Major Capital Projects".

¹¹ See Motion at 7-8.

and (4) afford HECO an opportunity to develop a sufficient "track record" for decoupling in advance of the review of the RBA and RAM expected to be conducted in HECO's 2011 rate case.¹²

According to the HECO Companies, all three companies' 12-month trailing returns on equity as of June 2009 were more than 300 basis points less than that authorized by the commission in their most recent rate cases, primarily as a result of decreasing sales caused by energy efficiency, conservation, increasing amounts of customer-sited distributed generation and a poor economy. In addition, the HECO Companies maintain that certain initiatives undertaken by the companies pursuant to commitments in the Energy Agreement¹³ will further erode sales growth and move the current oil-based power network to a more renewable, distributed and intermittent-powered system which may require the companies to incur additional expenses to maintain service reliability to their customers.¹⁴

¹² See id. at 4. Further discussion of (1) the need for and benefits of decoupling, and (2) the Parties' general support of decoupling is provided in Attachment 7 to the HECO Companies' Motion.

¹³ The October 20, 2008 Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies is referred to as the "Energy Agreement".

¹⁴ See HECO Memo at 4-5.

The HECO Companies also maintain that the actual performance of HECO's RBA and RAM cannot be evaluated until those mechanisms have actually been implemented over a period of time long enough to provide meaningful information and experience as to how well they work. Thus, according to the HECO Companies, if HECO is not afforded an opportunity to develop a sufficient "track record" for decoupling in advance of its 2011 rate case, there will likely be little if any new information to evaluate that has not already been considered by the Parties in this docket.¹⁵

A.

The HECO Companies' RBA

With respect to the proposed establishment of the RBA for the HECO Companies, the HECO Companies state that the RBA is conservative in design, simple, and workable with filings and review procedures. Citing the Consumer Advocate's opening brief, the HECO Companies maintain that other advantages of the RBA are that it will make the companies indifferent to changes in future sales volumes, will stabilize the companies' revenues which will protect the companies' financial condition, and will result in less frequent rate cases.

¹⁵ Id. at 6.

According to the HECO Companies, if the Commission approves the RBA as proposed in the instant Motion, HECO target revenues will be based on a rigorously reviewed test year that is the most current possible, the 2009 test year. In addition, with the establishment of the HECO RBA as of January 1, 2010, HECO will be able to collect revenues in 2010 that align with the test year revenue requirement authorized in HECO's 2009 test year rate case Interim Decision and Order, as adjusted based on the 2010 RAM determined in accordance with HECO's Interim RAM Tariff Provision.¹⁶

The HECO Companies maintain that, similarly, if the Commission were to order the immediate establishment of the RBA and RAM for MECO and HELCO with the issuance of the interim decision and orders for their 2010 test year rate cases, the sensitivity of the determination of the test year sales and demand forecasts as substantial contested issues would be eliminated.¹⁷

B.

RBA and RAM Modifications

As noted above, the HECO Companies' interim request includes modifications to the RBA and RAM mechanisms

¹⁶ See id. at 9-10.

¹⁷ See id., citing HDA's opening brief.

described in the Joint Decoupling Proposal that would: (1) include only one RBA account for all residential and nonresidential customers; (2) refund to ratepayers (with interest) RAM revenues associated with disallowed costs for Baseline Capital Projects; and (3) include an interim performance metric.

1.

Inclusion of One RBA Account Instead of Two

With respect to their proposal to include in the interim RBA tariff provisions only one RBA account instead of the two RBA accounts (i.e., residential and nonresidential subaccounts), the HECO Companies state that the advantages of this modification include simplicity of administration, smoothing of customer impacts between rate cases, and an allocation of costs that is a proxy for a revised cost-of-service study. In addition, the HECO Companies represent that no objections to the use of a single RBA account have been raised by the other parties.¹⁸

2.

Refund of Disallowed Baseline Capital Costs

With respect to their proposal to refund disallowed baseline capital costs, the HECO Companies state that if Baseline Capital Project costs are disallowed to a point

¹⁸ See id. at 11.

where the total amount of Baseline Capital Projects' costs are below what was estimated and used to calculate the rate base RAM, the Companies will refund the RAM revenues associated with the difference, with interest. According to the HECO Companies, this change should address any concern that ratepayers might "pay" for projects that have not been reviewed and found to be "prudent".¹⁹

3.

Inclusion of an Interim Performance Metric

With respect to the HECO Companies' proposal to include an interim performance metric ("IPM") that would apply to HECO's 2011 RAM and terminate when the interim decoupling mechanism terminates, as proposed, the IPM would have a target of 40 megawatts ("MW") of new renewable energy (i.e., renewable electrical energy as defined in HRS § 269-91) procured by HECO between November 30, 2009 and December 31, 2010, through the various procurement methods including executed power purchase agreements ("PPA") (once filed with the commission for approval), Schedule Q and/or feed-in tariffs contracts, and new net energy metering ("NEM") systems reported by the utility in its annual NEM Report to the commission. Under the IPM, the 2011 RAM amount that HECO would be able to recover would be based on

¹⁹ Id. at 12.

the proportion of the total MW of new renewable energy procured to the total metric of 40 MW, but would be capped at the total calculated RAM amount in HECO's tariff. The 2011 RAM amount adjusted by the IPM would be included in the 2011 RBA as described in HECO's interim RBA tariff provision.²⁰

According to the HECO Companies, the IPM target will help the companies' compliance with the Renewable Portfolio Standards law as amended by Act 155²¹ and will not serve as a "cap" on the Companies' efforts to add and integrate renewable energy to the system. In addition, as further discussed below, the HECO Companies propose that discussion of a permanent performance metric or performance incentive mechanism should take place with the continuation of this docket.²²

C.

Establishment of the RAM for HECO

As noted above, the HECO Companies request approval for HECO to immediately implement the RBA and RAM described in Attachments 1 and 2 to the Motion effective January 1, 2010, and to have those mechanisms remain in effect until interim rates become effective pursuant to an interim

²⁰ See id. at 21-23.

²¹ 2009 Haw. Sess. L.

²² See HECO Memo at 23.

decision and order in HECO's 2011 test year rate case.

According to the HECO Companies, this would enable HECO to be compensated for increases in 2010 and 2011 utility costs and infrastructure investment between the time that the RAM is approved and the time interim rates go into effect in connection with HECO's 2011 test year rate case.²³

In addition, the HECO Companies maintain that because of the structural regulatory lag that takes place during a test year, if HECO is not allowed to continue the RAM while fixing its revenues to the 2009 test year level, HECO will not be given an opportunity to reach its authorized rate of return. The HECO Companies further state that by allowing the RAM to continue until interim rates become effective pursuant to an interim decision and order in HECO's 2011 test year rate case, a second RBA and RAM annual filing will take place, which may provide a better picture of how the RBA and RAM process actually works when fully implemented and ongoing. However, the HECO Companies maintain that regardless of the Commission's decision on the RAM in HECO's 2011 test year rate case interim decision and order in that docket, the continuation of the RBA would

²³ See id. at 12.

not be affected, unless otherwise ordered by the Commission.²⁴

D.

Establishment of the RAM for MECO and HELCO

With respect to MECO and HELCO, the HECO Companies seek approval to implement their RBA and RAM provisions at such time as interim rates become effective pursuant to interim decision and orders in MECO and HELCO's respective 2010 test year rate cases. In this regard, the HECO Companies maintain that, similar to HECO, implementation of the RBA and RAM at such time will allow MECO and HELCO to set target revenues based on a rigorously reviewed test year that is the most current possible. According to the HECO Companies, if MECO and HELCO are not allowed to implement the RAM (along with the approval of the RBA upon the issuance of the interim decision and orders for their 2010 test year rate cases) they may require back-to-back rate cases, depending on the inflationary and economic pressures that are experienced or forecasted for 2011.²⁵

The HECO Companies further state that if, as a result of the final decision and orders in the 2010 test year rate cases (or a final decision and order in the instant

²⁴ See id. at 12-14.

²⁵ See id. at 14-15.

docket), the RAM is not allowed to be effective for calendar year 2011 for MECO and HELCO, the RAM revenues will be refunded (with interest) if the Commission determines that the RAM should not have been implemented.²⁶

E.

Continuation of the Proceeding

With regard to HECO Companies' request that this proceeding be continued for the primary purpose of evaluating the design and adoption of clean energy-related decoupling performance metrics, the companies state that the consideration of some specific type of performance incentive mechanism is an important topic that should be further investigated, and that continuation of this docket will allow the parties more time to gather and share information regarding the actual decoupling and RAM implementation experience, and to review and develop appropriate metrics that would enhance decoupling, including the RBA and RAM in the future.²⁷ To that end, the HECO Companies propose the following possible schedule of activities to address performance metrics issues:

- (1) Technical workshop to be held before the end of the year on performance metrics;

²⁶ Id. at 15.

²⁷ See id. at 9.

(2) Review of the RBA and RAM filing process to take place with parties (either meeting or conference call) sometime in March/April 2010 (the RAM for 2010 is proposed to be filed by March 31, 2010);

(3) Review of customer education communications to take place with parties (either meeting or conference call) sometime in early June 2010 (billing of the RBA and RAM is proposed to commence on June 1, 2010); and

(4) Filing of statements of position by the parties no later than June 30, 2010, so that they can be "incorporated" or referenced in the Hawaiian Electric 2011 test year rate case.²⁸

F.

Interim Implementation of Decoupling

Under the HECO Companies' interim proposal, the interim RBAs that are established and the interim RAMs that will be implemented, if approved by the Commission as requested in the companies' Motion, will either be continued, modified or terminated with the issuance of final decision and orders in the HECO Companies' 2009 (HECO) and 2010 (MECO and HELCO) test year rate cases or the issuance of a final decision and order in the instant docket.

Also under the HECO Companies' proposal, HECO's 2009, 2010 and 2011 target revenues (including RAM revenue adjustments) initially would be based on the Interim Decision and Order issued on July 2, 2009, in HECO's 2009

²⁸ Id. at 10 (footnote omitted).

test year rate case, Docket No. 2008-0083. However, the HECO Companies propose that if the commission grants HECO's Motion for Second Interim Increase for CIP CT-1 Revenue Requirements, or in the Alternative, to Continue Accruing AFUDC for the CIP CT-1 Project, filed on November 19, 2009 in Docket No. 2008-0083, HECO's target revenues for 2009 through 2011, including RAM revenue adjustments, would be increased to reflect the authorized base revenues approved in the second interim decision and order.²⁹

With respect to the interplay between timing of the commission's final decision and orders in the instant docket and Docket No. 2008-0083, the HECO Companies note that:

If the final decision and order is issued in the 2009 test year rate case before the final decision and order in the instant proceeding, the interim target revenues would once again be modified to reflect the authorized base revenues in the final decision and order. Hawaiian Electric would recalculate what the interim target revenues would have been as if the final decision and order had been in place from the effective date of the interim target revenues. If the difference between the total interim target revenues collected and recalculated interim target revenues shows that Hawaiian Electric "overcollected" interim target revenues, the difference will be refunded to customers with interest. If, however, the difference shows that Hawaiian Electric "undercollected" interim target revenues, no billing adjustment will be made for the target revenues collected in prior period(s).

²⁹ See id. at 24.

The Companies have reflected this proposed treatment of target revenues that are initially based upon interim decision and orders issued in rate cases, then updated for final decision and orders that reflect different authorized base revenues, in the proposed Hawaiian Electric Interim RAM Tariff Provision (Attachment 2).

Upon issuance of the final decision and order in the instant proceeding, Hawaiian Electric will, as described above, recalculate what the interim target revenues would have been as if the final decision and order had been in place from the effective date of the interim target revenues. If the difference between the total interim target revenues collected and recalculated interim target revenues shows that Hawaiian Electric "overcollected" interim target revenues, the difference will be refunded to customers with interest. If, however, the difference shows that Hawaiian Electric "undercollected" interim target revenues, no adjustment will be made to the target revenues collected in prior period(s). Until the final decision and orders are issued in both the 2009 test year rate case and the instant docket, the target revenues would be "interim" and subject to change for the period that they have been collected. Hawaiian Electric's proposed Interim RBA Tariff Provision (Attachment 1) reflects the proposed treatment of the interim target revenues described above.³⁰

The HECO Companies propose similar treatment of interim target revenues for MECO and HELCO in connection with their respective 2010 test year rate cases.³¹

G.

Precedent for Interim Order

³⁰ Id. at 24-25 (footnotes omitted).

³¹ See id. at 26.

In their Motion, the HECO Companies contend that the commission's authority to grant interim approval of the RBA and RAM in this docket is inherent in its express powers to regulate rates and supervise public utilities operating within the State, as conferred upon the commission by Chapter 269, HRS.³² In this regard, the HECO Companies point out that the commission has in the past exercised its inherent authority to issue interim decisions in both: (1) the rate case context, prior to the enactment of the interim decision provision set forth in HRS § 269-16(d);³³ as well as (2) non-rate case dockets, involving (i) commitments of expenditures, pursuant to Paragraph 2.3(g)(2) of G.O. 7,³⁴ (ii) fuel contracts (and to include costs incurred pursuant to the contracts in Energy Adjustment Clauses ("ECAC"), pursuant to HAR § 6-60-6),³⁵ and (iii) a PPA (and to include purchased energy costs incurred pursuant to the PPA in an ECAC pursuant to HAR § 6-60-6, and to recover firm capacity payments through a

³² See, e.g., HRS §§ 269-6 and 269-7.

³³ See, e.g., In re Kauai Elec. Div. of Citizens Util. Co., 60 Haw. 166, 590 P.2d 524 (1978).

³⁴ See, e.g., Docket No. 2007-0124, Interim Order No. 23544 (July 13, 2007); Docket No. 2007-0409, Order No. 23915 (December 20, 2007).

³⁵ See, e.g., Docket No. 6052, Interim Decision and Order No. 9608 (December 30, 1987); Docket No. 6576, Interim Decision and Order No. 10435 (December 27, 1989).

firm capacity surcharge pursuant to HRS § 269-27.2 and § 269-16).³⁶

H.

Non-Moving Parties' Positions on the Motion

1.

Consumer Advocate

The Consumer Advocate indicates in its "Comments" on the Motion³⁷ that the Consumer Advocate concurs with HECO's decoupling mechanism modifications concerning (1) the inclusion of one RBA account instead of two, and (2) refunding of disallowed baseline capital project costs.³⁸ However, although the Consumer Advocate "is not adverse to the concept of performance metrics being incorporated within the regulatory process",³⁹ the Consumer Advocate objects to HECO's request for an interim order.

According to the Consumer Advocate, "There is no need for an Interim Order under these circumstances and the Division supports issuance of a Final Order at this time. The Division does not agree with HECO's proposal to

³⁶ See Docket No. 12277, Decision and Order No. 7663 (March 3, 1993).

³⁷ See Division of Consumer Advocacy's Comments on HECO's Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited, filed December 11, 2009 ("CA Memo").

³⁸ See CA Memo at 5-6.

³⁹ Id. at 10.

continue this Docket so as to hold additional workshops and statements of position by the parties.”⁴⁰ Rather, the Consumer Advocate contends that “[t]he existing record is supportive of the issuance of a Final Order in favor of decoupling, approving the tariffs needed to implement decoupling.”⁴¹

The Consumer Advocate points out that the procedural schedule in this docket did not “provide for interim implementation of decoupling or for any continuation of these proceedings after the close of hearings.”⁴² The Consumer Advocate also notes that “no consensus has emerged on clean energy performance expectations, penalties or incentives”,⁴³ and questions whether “the cost and burden of continuation of these proceedings will produce either consensus regarding HCEI performance measures or any more reasonable financial outcome than would result from Commission approval of the JFSOP with its next rate case review of HECO performance.”⁴⁴

In addition, the Consumer Advocate states that “[t]here is no evidentiary support for the newly proposed

⁴⁰ Id. at 3 (emphasis in original).

⁴¹ Id. at 4.

⁴² Id.

⁴³ Id. at 6.

⁴⁴ Id. at 4.

Interim Performance Incentive Mechanism”⁴⁵ and recommends that the mechanism be rejected on the grounds that it “has not been subjected to critical examination by the Parties or presented in the panel hearings”⁴⁶

With regard to renewable energy development, the Consumer Advocate represents that:

[M]any of the factors impacting the pace at which customer-sited distributed generation and other renewable resources can actually be deployed are not controllable by the utility and . . . it is not presently possible to specify detailed performance expectations given several ongoing proceedings before the Commission that will influence the rate of deployment of renewable resources.⁴⁷

Accordingly, the Consumer Advocate maintains that “the most appropriate forum for a detailed analysis of RPS performance is within the next HECO rate case, at which time actual facts and performance can be analyzed without speculation regarding what level of performance should be expected.”⁴⁸

By way of illustration, the Consumer Advocate states that:

In the event the 40 MW target is overly optimistic and actual achieved results are lower, the RAM revenues intended for 2011 may be arbitrarily reduced to the financial detriment of HECO. On the other hand, if HECO is readily able

⁴⁵ Id. at 8.

⁴⁶ Id. at 5.

⁴⁷ Id. at 10.

⁴⁸ Id. at 6.

to equal or exceed this proposed "target" with renewable projects already nearing fruition, no incentive is achieved because RAM revenues cannot exceed 100 percent of the amounts generated by application of RAM formulae. Alternatively, tying realization of RAM revenues to successful procurement of the 40MW target may encourage HECO to expedite contract negotiations on less than optimal terms, to the long term disadvantage of ratepayers.⁴⁹

Thus, "the Consumer Advocate is concerned that the proposed metric . . . may actually produce unreasonable financial results without regard to meaningful clean energy performance measurement."⁵⁰

2.

DBEDT

DBEDT, in its "Memorandum in Support" of the Motion,⁵¹ states that it "supports the approval of the decoupling mechanism [with modifications including (1) the use of only one RBA account; (2) the refund of disallowed baseline capital projects with interest; and (3) the inclusion of an interim performance metric for HECO] on an interim basis as proposed in HECO's motion."⁵² In addition, DBEDT states that:

⁴⁹ Id. at 8.

⁵⁰ Id. at 9.

⁵¹ See The Department of Business, Economic Development, and Tourism's Memorandum in Support of the Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited, filed December 3, 2009 ("DBEDT Memo").

⁵² DBEDT Memo at 2.

DBEDT's support of HECO's motion for the approval of a decoupling mechanism on an interim basis neither conflicts with nor overrides DBEDT's positions and recommendations on these issues raised in the docket. DBEDT anticipates, as is reflected in the HECO Companies' motion, that the Commission's final decision and order in this docket will address and resolve these issues.⁵³

3.

HDA

In its "Memorandum in Response" to the Motion,⁵⁴ HDA states that it "does not oppose nor does it support HECO's Motion."⁵⁵ HDA notes that its "recommendation for a possible interim order and HECO's request for an interim order differ in several fundamental respects, including purpose, scope and details."⁵⁶ For example, HDA states that HECO's Motion "is closer to a request for a prompt final decision and order" and "would leave little for determination in any later final decision and order except determinations of any performance incentive mechanism."⁵⁷ In addition, HDA contends that "HECO's Motion would put any further consideration of the proposed decoupling policies

⁵³ Id. at 3-4.

⁵⁴ See Haiku Design and Analysis Memorandum in Response to: Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited and Memorandum in Support of Motion, dated December 2, 2009 ("HDA Memo").

⁵⁵ HDA Memo at 3.

⁵⁶ Id.

⁵⁷ Id.

and mechanisms into future rate case venues which would preclude further participation by the intervenor parties.”⁵⁸

HDA also clarifies that although “it may appear that HDA actively supports HECO’s Motion”, “HDA does not”, and “HDA has made its own distinct and different recommendation regarding an interim order and regarding HECO’s proposed Revenue Adjustment Mechanism (RAM) in HDA’s Opening Brief.”⁵⁹ HDA further represents that it “was not the party with which HECO negotiated the [interim performance incentive mechanism, or IPIM]. HDA has not had sufficient opportunity to understand the proposed IPIM in order to state a position.”⁶⁰

4.

Blue Planet, HREA and HSEA

Blue Planet filed a “Memorandum in Partial Opposition” to the Motion,⁶¹ to which HREA and HSEA have filed joinders.⁶² As summarized in Blue Planet’s memorandum, Blue Planet’s position on the Motion is as follows:

⁵⁸ Id. at 4.

⁵⁹ Id.

⁶⁰ Id. at 5.

⁶¹ See Memorandum in Partial Opposition to Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd. Filed November 25, 2009, filed December 3, 2009 (“Blue Planet Memo”).

⁶² See Hawaii Renewable Energy Alliance’s Joinder to Blue Planet Foundation’s Memorandum in Partial Opposition to Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric

Blue Planet does not oppose the Motion's request for approval of the HECO RAM in general. Rather, Blue Planet opposes the Motion's request only insofar as it proposes that the Commission make no further decision on the HECO RAM in this proceeding. A final decision on the HECO RAM should be made in this proceeding, with the benefit of actual experience from trial implementation of the HECO RAM and with the full participation of all parties to this proceeding.⁶³

According to Blue Planet, a decision regarding the continuation of the HECO RAM in a subsequent rate case "is not equivalent to a final decision on the HECO RAM. The decision would be made in a rate case from which the intervenor parties to this proceeding would likely be excluded."⁶⁴ In addition, "Given the fundamental change in ratemaking that the RAM represents," Blue Planet suggests that "additional 'collective input' from the parties may help ensure that the Commission's decision on the final HECO RAM meets with success and thereby contributes meaningfully toward supporting the utilities' financial integrity and advancing Hawaii's clean energy objective."⁶⁵

III.

Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd. Filed November 25, 2009, filed December 3, 2009; and Hawaii Solar Energy Association's Joinder to Blue Planet Foundation's Memorandum in Partial Opposition to Motion for Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd. Filed November 25, 2009, filed December 3, 2009.

⁶³ Blue Planet Memo at 1-2.

⁶⁴ Id. at 3.

⁶⁵ Id. at 6.

Decoupling

There is strong support among the Parties for implementing decoupling at this time.

A.

Consumer Advocate

According to the Consumer Advocate:

With HCEI implementation, it is expected that conservation and customer-sited renewable DG will displace increasing amounts of the HECO Companies' fossil-generated energy. To protect against the pervasive erosion of its energy sales revenues and the continuous cycling of rate cases that would be required to otherwise provide full fixed cost recovery, the RBA will stabilize the HECO Companies' margin revenues. One benefit of revenue stabilization is the protection of the HECO Companies' financial condition and ability to access capital markets on reasonable terms. Another benefit from decoupling revenue stabilization is the reduction in business risks faced by the HECO Companies after sales volume risks are shifted to ratepayers, which serves to rationalize a lower authorized return on equity for the utility in future rate cases. Next, it should be noted that decoupling is beneficial in eliminating the need in rate cases to accurately predict future test year sales volumes and revenues, because any inaccuracies in such predictions are self-correcting through the RBA account. Finally, by making the HECO Companies indifferent to changes in future sales volumes, decoupling removes any perceived business disincentive to fully support the deployment of renewable resources, DG or expanded conservation measures. In all of these ways, revenue decoupling and the RBA provision serve to complement the State's objectives set forth in the HCEI Agreement.

Administrative efficiency and cost savings can be expected if decoupling is approved for the HECO Companies. These efficiency gains can be

expected primarily as a result of less frequent general rate cases that tend to consume substantial resources and distract from other strategic initiatives before the Commission in connection with the HCEI provisions.⁶⁶

The Consumer Advocate also notes that:

Full decoupling of sales volumes from utility margin revenues is important to the goal of aligning utility incentives regarding sales volumes with the broader goals of the State to move away from fossil-fuel generated utility-supplied energy. Thus, it is apparent that the basic decoupling mechanism, as set forth in the RBA provision tariff and related administrative procedures documented within the Joint FSOP are entirely consistent with the State's objectives and should be approved.⁶⁷

The Consumer Advocate notes that "[t]he RAM provision is needed in addition to RBA, because the RBA will serve only to hold utility margin revenues constant between rate cases, providing no opportunity for recovery of any increasing costs to provide service."⁶⁸ The Consumer Advocate further notes that the proposed RAM provision simplifies the "inherently complicated process" of estimating the HECO Companies' revenue requirements, and that the resulting estimates are intentionally conservative.⁶⁹ "The combined effect of these RAM provision simplification and conservatism elements is intended to

⁶⁶ Division of Consumer Advocacy's Post-Hearing Opening Brief, filed September 8, 2009 ("CA Opening Brief") at 14-15.

⁶⁷ CA Opening Brief at 16.

⁶⁸ Id. at 17.

⁶⁹ See id. at 19.

produce adequate revenue enhancement between formal rate cases to preserve the financial integrity of the HECO Companies in an administratively efficient manner (without annual rate cases)."⁷⁰ Thus, the "RAM provision will achieve Hawaii's objectives if it succeeds in reasonably estimating the HECO Companies' incremental revenue needs, so as to yield just and reasonable rates without the delay and cost associated with processing formal annual rate cases."⁷¹

B.

HECO Companies

The HECO Companies' reasons for supporting decoupling generally track those of the Consumer Advocate, and are summarized in Attachment 7 to their Motion on pages 2 to 4.

The HECO Companies maintain that:

[I]t is essential that the decoupling mechanism adopted in this docket include both (1) a sales decoupling component, which breaks the link between sales and electric revenue, and (2) a revenue adjustment mechanism ("RAM"). Decoupling revenue from sales (including changes in weather and economic upturns/downturns, costs of financing, the utility's credit rating, and other external variables) is intended to encourage energy efficiency and help the utility achieve its target revenue requirement in between rate cases. However, setting a target revenue requirement that does not change between rate cases under sales decoupling provides no

⁷⁰ Id. at 20.

⁷¹ Id. at 21.

compensation to the utility for increases in utility costs and infrastructure investment. Therefore, there is a need to allow increases in the target revenue requirement level each year. This is accomplished through the RAM.⁷²

They contend that there is an immediate need: (1) for the sales decoupling component, driven by the trend of decreasing sales caused by energy efficiency, conservation, increasing amounts of customer-sited distributed generation, and the poor economy, all of which threaten the financial well-being of the utilities when these sales decreases occur between rate cases;⁷³ and (2) for the RAM, driven by the increase in these costs related to maintaining and improving service reliability and normal inflation.⁷⁴

C.

Blue Planet and HSEA

In its opening brief, Blue Planet stated that: "Blue Planet supports the adoption of sales decoupling with a Revenue Adjustment Mechanism ('RAM') (together, 'decoupling mechanism') in this proceeding that meaningfully and effectively aids in the achievement of Hawaii's energy

⁷² Reply Brief of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company Limited, filed September 29, 2009 at 2.

⁷³ Opening Brief of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Light Company, Limited, filed September 8, 2009 ("HECO Opening Brief") at 8-9.

⁷⁴ See HECO Opening Brief at 8, 10-14.

objectives.”⁷⁵ HSEA, through its joinder to Blue Planet’s opening brief, supports Blue Planet’s positions.⁷⁶

D.

DBEDT

In its opening brief, DBEDT stated that: “DBEDT believes that a well designed decoupling will help achieve Hawaii’s objectives. Decoupling helps remove the barriers to the utilities to aggressively promote and accommodate clean and renewable resources by ensuring utility cost recovery and reducing or eliminating regulatory lag.”⁷⁷ DBEDT also stated that it “believes that timely cost recovery is important to enable the HECO Companies to deliver on their commitments in the Energy Agreement that in turn supports the achievement of Hawaii’s energy goals.”⁷⁸

E.

HDA and HREA

HDA recognizes that “several factors are changing that could affect the ability of the utilities to earn

⁷⁵ Opening Brief of Blue Planet Foundation, filed September 8, 2009 at 1.

⁷⁶ See Hawaii Solar Energy Association’s Joinder to Blue Planet Foundation’s Post-Hearing Opening Brief Filed on September 8, 2009, filed September 8, 2009.

⁷⁷ The Department of Business, Economic Development, and Tourism’s Opening Brief, filed September 8, 2009 (“DBEDT Opening Brief”) at 5.

⁷⁸ DBEDT Opening Brief at 7.

reasonable returns on an ongoing basis without frequent rate cases under existing regulatory protocols”, including the “absence of persistent increased revenue between rate cases, recently due to flat or declining sales and demand volume and prospectively guaranteed by decoupling, constitutes a change in the Hawaii regulatory climate that affects the utilities’ ability to earn reasonable returns on equity.”⁷⁹ In addition, HDA recognizes that “[s]everal persistent factors are expected to depress the rate of sales and demand growth in the future compared to historical periods, including aggressive state policy goals and standards to increase energy efficiency and renewable generation (including generation on the customer side of the meter which would reduce sales).”⁸⁰

HDA further notes that: “Aside from any necessity for a RAM to provide sufficient utility revenues according to conventional ratemaking standards, the proposed RAM could serve to further several corollary objectives that have merit in improving regulatory efficiency”, such as a “reduction in the frequency of general rate cases and, more

⁷⁹ See Haiku Design and Analysis Opening Brief, filed September 7, 2009 (“HDA Opening Brief”) at 14.

⁸⁰ HDA Opening Brief at 15-16.

generally, decreased regulatory administrative burden", and "[i]mproved utility financial condition".⁸¹

HDA goes on to state that:

The HECO Companies assert that acute financial circumstances might require HECO to file back to back rate cases if its proposed RAM is not approved. HECO also testified that its bond ratings are [sic] could potentially be downgraded if its financial health is not improved. If true, these are significant assertions.⁸²

HREA, through its joinder to HDA's opening brief, supports HDA's positions.⁸³

IV.

Discussion

A.

Undisputed Issues

Based on the Parties' responses to the HECO Companies' Motion, none of the Parties appear to oppose the HECO Companies' establishment and implementation of an RBA and RAM for HECO, HELCO or MECO. As stated above, DBEDT supports the HECO Companies' Motion; HDA "does not oppose" the Motion; the Consumer Advocate supports "approving the tariffs needed to implement decoupling" and "concurs with HECO's decoupling mechanism modifications concerning (1)

⁸¹ See id. at 17.

⁸² Id. at 19 (footnote omitted).

⁸³ See Hawaii Renewable Energy Alliance's Joinder to Haiku Design and Analysis's Post-Hearing Opening Brief Filed on September 8, 2009, filed September 8, 2009.

the inclusion of one RBA account instead of two, and (2) refunding of disallowed baseline capital project costs"; and Blue Planet, HREA and HSEA do not "oppose the Motion's request for approval of the HECO RAM in general."

B.

Disputed Issues

Although the Parties appear to have reached a general consensus as to the undisputed issues discussed above, the Parties have not reached unanimous agreement as to: (1) the inclusion of a performance metric in the HECO Companies' decoupling mechanism; (2) the continuation of this proceeding for the primary purpose of evaluating performance metrics; or (3) evaluation of the HECO Companies' RBA and RAM provisions in their next round of rate cases.

Notwithstanding the foregoing disputed issues, the commission finds that it is just and reasonable, and within the commission's discretion, to grant the interim relief requested by the HECO Companies. Based on the record in this docket, the commission finds that implementation by the HECO Companies of the interim RBA and RAM provisions is likely to result in clean energy, regulatory and/or financial benefits to the HECO Companies and their customers.

The commission further finds that the continuation of this docket for the primary purpose of evaluating performance metrics will enable the parties, within the regulatory process, to further develop the record with respect to performance metrics. On the other hand, in light of the substantial record that has been developed with respect to the HECO Companies' RBA and RAM provisions in general, the commission finds that it would be reasonable to consider the continuation, modification or termination of decoupling in the HECO Companies' next round of rate cases.

With respect to the HECO Companies' proposed schedule of activities to address performance metrics issues, the commission finds the schedule generally to be reasonable. However, the commission notes that it may not be practicable to schedule a technical workshop on performance metrics before the end of 2009. As a result, although the commission approves the HECO Companies' proposed schedule of activities to address performance metrics issues, the commission modifies item no. (1) of the schedule by directing the Parties to schedule the technical workshop to take place before the end of January 2010.

C.

Final Decision and Order

The commission emphasizes that the findings and approvals here of the RBA and RAM provisions reflected in Attachments 1-6 of the HECO Companies' Motion are for the purpose of this Interim Decision and Order only, and revenues collected thereunder are subject to refund as detailed in the Motion and HECO Memo, as indicated in Section II.F, above. All of the commission's decisions and rulings in this regard are subject to a more detailed review and analysis. The commission's final decision and order will reflect this review and analysis of all proposals of the Parties.

V.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' Motion For Interim Approval of a Decoupling Mechanism for HECO, HELCO, and MECO, filed on November 25, 2009, is granted, and the interim RBA and RAM tariff provisions, as set forth in Attachments 1-6 to the HECO Companies' Motion are approved.

2. Continuation of this docket is approved for the primary purpose of evaluating performance metrics.

3. The Parties shall schedule a technical workshop on performance metrics to be held before the end of January 2010.

4. The Parties' review of the RBA and RAM filing process shall take place either by meeting or conference call some time in March/April 2010.

5. The Parties' review of customer education communications shall take place either by meeting or conference call some time in early June 2010.

6. The Parties shall file statements of position regarding the issues addressed during the continuation of this docket no later than June 30, 2010.

DONE at Honolulu, Hawaii _____.

Public Utilities Commission
Of the State of Hawaii